MONTANA LEGISLATIVE HISTORY

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Bill H _____ S 413 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 3-15	✓ C	Hearing Date(s) 2-14	✓ C
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3-17	✓ C	_____	___ C
3-25	✓ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 413

INTRODUCED BY Dave

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL PERSONS AND TO AMEND SECTIONS 38-1301 THROUGH 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, AND 38-1331, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 38-1301, R.C.M. 1947, is amended to read as follows:

"38-1301. Purpose of ~~act~~ chapter. The purpose of this ~~act~~ chapter is:

(1) to secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person, and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) ~~to deprive a person of his liberty for purposes of treatment or care only when less restrictive alternatives are unavailable and only when his safety or the safety of others is endangered, and to provide for due process of law when this is done~~ to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this chapter."

Section 2. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"38-1302. Definitions. As used in this ~~act~~ chapter, the following definitions apply:

(1) "Board" means the mental disabilities board of visitors created by this ~~act~~ chapter.

(2) "Court" means ~~the~~ any district court of the state of Montana.

(3) "Department" means the department of institutions.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital or, a

community mental health center, or any mental health clinic or treatment center approved by the department. No correctional institution or facility, or jail, is a mental health facility within the meaning of this ~~act~~ chapter.

(7) "Next of kin" shall include, but need not be limited to, the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means ~~a person committed by the court to a seventy-two (72) hour evaluation or treatment or for a longer period~~ a person committed by the court for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman or other peace officer.

(10) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of mental health and certified by the department of institutions in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(11)~~ (12) "Respondent" means a person alleged in a petition filed pursuant to this ~~act~~ chapter to be seriously

mentally ill.

~~(12)~~ (13) "Responsible person" means any person willing and able to assume responsibility for a seriously mentally ill person, or person alleged to be seriously mentally ill, including next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a "responsible person" set out in this ~~act~~ chapter. Only one person ~~shall~~ may at any one time be the "responsible person" within the meaning of this ~~act~~ chapter. In appointing a responsible person, the court shall consider the preference of the respondent. The court may, at any time for good cause shown, change its designation of the "responsible person".

~~(13)~~ (14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof, or which has deprived the person afflicted of the ability to protect his life or health. No person may be involuntarily committed to a mental health facility nor detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes ~~the person~~ him to be seriously mentally ill within the meaning of this ~~act~~ chapter."

Section 3. Section 38-1303, R.C.M. 1947, is amended to read as follows:

"38-1303. Voluntary admission -- cost of admission. (1) Nothing in this ~~act shall~~ chapter may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department ~~of institutions~~. It ~~shall~~ is not ~~be~~ valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. The form shall contain a statement of the rights of the person voluntarily applying for admission, as set out in this ~~act~~ chapter, including the right to release.

(2) Any applicant who wishes to voluntarily apply for admission to the Montana state hospital shall first obtain certification ~~from the regional mental health director of his mental health region or if not reasonably available,~~ from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for 10 days

after his initial admission and for no more than ~~five (5)~~ days past his written request for release thereafter.

(4) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(5) The costs of transportation to a mental health facility under this section shall be provided by ~~the patient, his parents, guardian, or~~ the welfare department of the county of the patient's residence. However, if protective proceedings under Title 91A, chapter 5, have been or are initiated with respect to the person, the welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

(6) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

(7) Notwithstanding any other provision of law, a minor who is ~~sixteen (16)~~ years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(8) ~~Voluntary~~ Except as provided by this subsection,

voluntary commitment of a minor to a mental health facility for an in-patient course of treatment shall be for ~~a period of no more than thirty (30) days~~ the same period of time as that for an adult. Unless there has been a periodic review and a voluntary recommitment consented to by the minor patient and his counsel, voluntary commitment terminates at the expiration of 1 year. ~~If the professional person in charge of a minor patient determines that the commitment should continue for a period of more than thirty (30) days, he shall commence involuntary commitment proceedings in accordance with this act.~~ Counsel shall be appointed for the minor.

(9) If, in any voluntary commitment for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary commitment, then the commitment shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary commitment of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application."

Section 4. Section 38-1304, R.C.M. 1947, is amended to read as follows:

"38-1304. Rights and waiver of rights. (1) Whenever a person is involuntarily detained, or is examined ~~by a professional person~~ pursuant to ~~section~~ 38-1305, ~~or is notified that he will be the subject of a hearing pursuant to section 38-1305 or 38-1306,~~ the person shall be informed of his constitutional rights and his rights under this ~~act~~ chapter. A person may waive his ~~procedural~~ rights, ~~provided that the waiver is knowingly and intentionally made~~ or his rights may be waived by his counsel and responsible person acting together if a record is made of the reasons for the waiver. The right to counsel ~~in a hearing held pursuant to section 38-1306~~ may not be waived. The right to treatment provided for in this ~~act~~ chapter may not be waived.

(2) ~~In the case of a person who has been detained for a seventy-two (72) hour inpatient evaluation and treatment or for a longer period of time, a waiver of rights can be knowingly and intentionally made only with the concurrence of the patient's attorney or of the responsible person appointed by the court.~~ The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental

condition~~,~~; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse affects on his mental condition.

(3) [a] In the case of a minor, provided that a record is made of the reasons for the waiver, ~~of~~ his rights ~~can be knowingly and intentionally made:~~

~~(a) when the minor is under the age of twelve (12), by the parents of the minor;~~

~~(b) when the minor is over the age of twelve (12), by the youth and his parents;~~

~~(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with advice of counsel~~ may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

[b] If there is an apparent conflict of interest between a minor and his parents or guardian, the court ~~may~~ shall appoint a guardian ad litem for ~~the minor~~ him.

(4) In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state or by this ~~act~~ chapter, any person who is involuntarily detained or against whom a petition is filed pursuant to this ~~act~~ chapter has

the following rights:

(a) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(b) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(c) the right in any hearing to cross-examine witnesses;

(d) the right to be represented by counsel;

(e) the right to remain silent;

(f) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(g) the right to view and copy all petitions on file with the court concerning him;

(h) the right to be examined by a professional person of his choice when such professional person is reasonably available;

(i) the right to be dressed in his own clothes at any hearing held pursuant to this ~~act~~ chapter; and

(j) the right to refuse any but lifesaving medication for up to ~~twenty-four (24)~~ hours prior to any hearing held pursuant to this ~~act~~ chapter.

[5] A person detained pursuant to this chapter shall be detained in the least restrictive environment required to

protect the life and physical safety of the person detained or members of the public. Whenever possible, a person detained pursuant to this chapter shall be detained in a mental health facility and in the county of residence. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 5. Section 38-1305, R.C.M. 1947, is amended to read as follows:

"38-1305. Petition alleging person as seriously mentally ill -- contents and procedure. (1) A The county attorney, ~~on his own initiative or~~ upon the written request of any person, may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that ~~an evaluation of the~~

~~person's condition be made~~ the person be committed to a mental health facility for a period of no more than 3 months.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent, and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin, to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as responsible person;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the person requesting the petition, the

person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

~~(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is seriously mentally ill. If the court finds no such probable cause, the petition shall be discharged. If the court finds probable cause it shall submit the petition to a professional person for evaluation. If probable cause is found, the court may appoint a responsible person to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be hand delivered or mailed to the respondent and to the attorney, the person or persons legally responsible for care, support, and maintenance of the respondent, next of kin identified in the petition, and the person or persons identified by the county attorney as possible responsible persons.~~

(a) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(b) If a judge is available, he shall consider the petition and if he finds no probable cause it shall be dismissed. If the judge finds probable cause, counsel shall be immediately appointed for the respondent and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this chapter, and the substantive effect of the petition. The judge shall appoint a professional person and a responsible person and set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent shall be taken into consideration in the appointment of the responsible person and in the confirmation of the appointment of the attorney.

(c) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel, a professional person, and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time

is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this chapter, and the contents of the clerk's order as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a responsible person, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

(4) ~~(a) Upon receipt of the petition, the professional person shall examine the respondent and make such inquiry as he or she may deem appropriate. If the respondent does not cooperate and if requested by the professional person, the court may order the respondent to submit to examination by a professional person at a time and place designated by the court. The examination so ordered shall not exceed a period of four (4) hours.~~

~~(b) When the professional person first contacts the respondent, before he begins any examination, he shall give a copy of the petition to the respondent, and shall explain to the respondent the nature of the proceeding and his~~

~~rights as set forth in the petition.~~ Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the court of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney. If the professional person recommends dismissal, he shall additionally notify counsel and the respondent shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(5) ~~On the basis of his examination, the professional person shall recommend in writing either that the petition be dismissed or that a seventy-two (72) hour inpatient evaluation and treatment be ordered. If dismissal is recommended, the petition shall be summarily dismissed. The petition shall be dismissed if the respondent accepts voluntary treatment or admission to a mental health facility approved by the professional person conducting the examination. Whenever a professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered,~~

~~the recommendation shall be accompanied by a report explaining the reason for the recommendation and identifying any tests or evaluation devices which the professional person employed in evaluating the respondent. If the professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, notice of this recommendation shall be mailed or delivered to the respondent, the next of kin, when known, any person responsible for the care, support, and maintenance of the respondent, any other person identified in the petition, and the responsible person, if any, appointed by the court. Notice shall include the date, time, and place of the respondent's next appearance before the court.~~ The judge can, upon probable cause for detention, order detention of the respondent pending the hearing, in which case counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith. In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others. He shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.

~~(6) In the event the examining professional person recommends a seventy-two (72) hour inpatient evaluation and treatment, the respondent shall be brought before the court by the county attorney without undue delay, advised of the recommendation, supplied with a copy of the petition and the recommendation and advised of his rights to a hearing and to counsel. If a responsible person has not yet been appointed, the court shall appoint a responsible person at this time. If the right to a hearing and to counsel are waived, the court shall direct that the respondent be detained at a mental health facility for evaluation and treatment not to exceed seventy-two (72) hours. If a hearing is requested by the respondent, his attorney, or the responsible person appointed by the court, a time and place shall be set for the hearing. The matter shall be given precedence over all other court matters. If the respondent is unwilling or unable to retain counsel, the court shall appoint counsel and be responsible for notification.~~ Notice of the petition shall be hand delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and responsible person shall be hand delivered or mailed to the person or persons legally

responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible responsible person other than the one named as the responsible person. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 93-1512 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

(7) ~~The hearing shall be held before the court without a jury. The respondent may present such testimony and relevant documentary evidence as he or the responsible person or counsel desires. The county attorney shall represent the state. The professional person who made the recommendation shall be present in court and may be cross-examined concerning his recommendation and his report. After full hearing the court shall determine whether the respondent is seriously mentally ill within the definition~~

~~provided herein. If the court finds the respondent is not seriously mentally ill, he or she shall be discharged and the petition dismissed. If the court finds the respondent to be seriously mentally ill, it shall order the respondent detained at a mental health facility for examination and treatment not exceeding seventy-two (72) hours. However, the court may dismiss the petition if the respondent agrees to accept voluntary treatment or admission to a mental health facility.~~ The respondent shall be present unless his presence has been waived as provided in 38-1304(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this chapter. The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. Mental disorder shall be evidenced to a reasonable medical certainty; imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition. The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except

that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the patient is seriously mentally ill. The court may order the trial closed to the public for the protection of the respondent. If, upon trial, it is determined that the patient is not seriously mentally ill within the meaning of this chapter, he shall be discharged and the petition dismissed.

(8) ~~Persons receiving evaluation and treatment pursuant to this section shall be given a reasonable choice of an available professional person qualified to provide such services.~~ The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 6. Section 38-1306, R.C.M. 1947, is amended to read as follows:

"38-1306. ~~Petition for commitment -- trial -- determination of court.~~ Posttrial disposition -- petition for extension. ~~(1) If in the opinion of the professional person in charge of the patient the person detained under the provisions of section 38-1305 does not require further evaluation or treatment he shall be released within seventy-two (72) hours. If, in the opinion of the professional person, the patient requires further evaluation or treatment, he shall advise the court accordingly not less than three (3) days from the date of detention and shall~~

~~within the same time file a petition requesting that the patient be committed to a facility for a period not in excess of three (3) months. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall explain the reasons for the petition and shall identify any tests or evaluation devices which the professional person employed in evaluating the patient. The professional person may retain the patient in custody by court order pending a hearing on the petition only if detention is necessary to prevent injury to the patient or others.~~

~~(2) Upon receipt of a petition for commitment not to exceed three (3) months, the court shall immediately set the time and place for a hearing, which shall be held not more than three (3) days from the receipt of the petition. The court may extend the period to seven (7) days. The time for the hearing may be further extended at the request of counsel for the patient. The court shall give written notice to the professional person who requested the commitment, the patient, his counsel, his next of kin, when known, the responsible person appointed by the court, and the county attorney. At any time prior to the date set for hearing, the patient, or his attorney, may request a jury trial, whereupon the time set for hearing will be vacated and the matter set on the court's jury calendar at the~~

~~earliest date possible, the matter taking precedence over all other matters on the jury calendar.~~

~~(3) At any time prior to trial on the petition before court or jury, the patient may waive trial and give written consent to commitment to a facility for a period not to exceed three (3) months. Such consent must be joined in writing, by his attorney and by the responsible person appointed by the court.~~

~~(4) The patient shall be present and represented by counsel at all stages of the trial, and the sole question to be determined by the court or jury, as the case may be, shall be whether the patient is seriously mentally ill within the meaning set forth in this act. The professional person who filed the petition shall be present in court for the hearing and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except that, if tried by a jury, at least three-fourths (3/4) of the jurors must concur on a finding that the patient is seriously mentally ill. The finding may be appealed to the Montana supreme court in the same manner as other civil matters. The standard of proof in any hearing held pursuant to this section shall be proof beyond a reasonable doubt. Any court may order a hearing closed to the public for the protection of the respondent.~~

~~(5)~~ (1) ~~(a)~~ ~~If, upon hearing, it is determined that~~

~~the patient is not seriously mentally ill within the meaning of this act, he shall be discharged and the petition of the professional person dismissed.~~ If it is determined that the ~~patient~~ respondent is seriously mentally ill within the meaning of this ~~act~~ chapter the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

~~(a)~~ (i) commit the ~~patient~~ respondent to a facility for a period of not more than ~~three (3)~~ months;

~~(b)~~ (ii) order the ~~patient~~ respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

~~(c)~~ (iii) order outpatient therapy; or

~~(d)~~ (iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection ~~shall~~ may affect the ~~patient's~~ respondent's custody for a period of more than ~~three (3)~~ months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the ~~patient~~ respondent and

the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the ~~patient~~ respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(2) At any time within the ~~three (3) month~~ 3-month period the patient may be discharged on the written order of the professional person in charge of ~~the patient~~ him. In the event the patient is not discharged within the ~~three (3) month~~ 3-month period and if the term is not extended as provided herein, ~~the patient~~ he shall be discharged by the facility at the end of ~~three (3)~~ months without further order of the court. Notice of ~~such~~ the discharge ~~will~~ shall be filed with the court within ~~five (5)~~ days of the discharge.

~~(6)~~ (3) Not less than ~~two (2)~~ calendar weeks prior to the end of the ~~three (3) month~~ 3-month period of detention, the professional person in charge of the patient may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices

which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person. Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and to the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for ~~such~~ a hearing on a date not more than ~~ten (10)~~ days from the receipt of the request and notify the same people including the professional person in charge of the patient. Procedure on the petition for extension, when a hearing has been requested, shall be the same in all respects, as the procedure on the petition for the original ~~three (3) month~~ 3-month commitment except the patient ~~shall~~ is not ~~be~~ entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this ~~act~~ chapter, ~~the patient~~ he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court

shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in subsection ~~(5)~~ (1) of this section except that no order ~~shall~~ may affect his custody for more than ~~six (6)~~ months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. ~~Any~~ A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

~~(7)~~ (4) Further extensions may be obtained under the same procedure described in subsection ~~(6)~~ (3) of this section except that the patient's custody ~~shall~~ may not be affected for more than ~~one (1)~~ year, without a renewal of the commitment under the procedures set forth in subsection ~~(6)~~ (3) of this section, including a statement of the findings required by subsection ~~(6)~~ (3).

~~(8)~~ (5) At any time during the patient's commitment the court may on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the responsible person appointed by the court, order the patient to be placed in

the care and custody of relatives or guardians, or to be provided outpatient therapy or other appropriate placement or treatment."

Section 7. Section 38-1307, R.C.M. 1947, is amended to read as follows:

"38-1307. Emergency situation -- petition -- detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and, as a result of serious mental illness, to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation ~~genuinely~~ exists, then the person may be detained until the next regular business day. At that time, the professional person shall ~~either cause the county attorney to file the petition provided for in section 38-1305 or shall~~ release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 38-1305 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

~~(3) When the petition is filed, after an emergency detention, the court may order the respondent detained for the amount of time necessary for a professional person to conduct the examination and inquiry provided for in section 38-1305 and to report his findings and recommendations to the court. In no case shall such detention exceed twenty-four (24) hours from the time of the filing of the petition. Saturday, Sunday, and legal holidays shall not be included in computing the twenty-four (24) hour period. The court may also order the respondent detained during the seventy-two (72) hour evaluation and treatment period, if ordered, and through the period of the hearing on initial commitment, if held. No period of detention shall be ordered by the court pursuant to this section unless the court finds that such detention is required in the interest of public safety or the life or safety of the respondent. An order of detention shall include a statement of the factual basis for the order.~~

~~(4) Any person detained pursuant to this section shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or of members of the public. Whenever possible, a person detained pursuant to this section shall be detained in a mental health facility. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and of the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. In no case shall a person be detained in a jail or other correctional facility pursuant to this section for a longer period of time than is required for the county attorney to file a petition and for a professional person to complete his initial examination and inquiry and report his findings to the court.~~

~~(5)~~ (3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section."

Section 8. Section 38-1308, R.C.M. 1947, is amended to read as follows:

"38-1308. Outpatient care -- conditional release. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by

outpatient care prior to the expiration of the period of commitment, then ~~such~~ outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, ~~shall~~ may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when ~~such~~ the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release, and because of that failure has

become a substantial danger to himself or other persons, then, upon notification by the mental health facility designated to provide outpatient care, or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind ~~such~~ the order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, ~~and~~ his guardian or conservator, if any, his next of kin, if known, and the responsible person appointed by the court. The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person.

~~Upon expiration of the period of commitment, or when the patient is released from outpatient care, notice in writing to the court which committed the patient for treatment shall be provided by the professional person in~~

~~charge of the patient.~~

(5) Notice in writing to the court which committed the patient for treatment shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care."

Section 9. Section 38-1309, R.C.M. 1947, is amended to read as follows:

"38-1309. Right to counsel and appeal — examination of respondent — records. (1) The person alleged to be seriously mentally ill ~~shall have~~ has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint ~~an attorney~~ one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides. ~~If the court determines that the respondent is financially unable to employ an attorney, the court shall appoint counsel who shall be compensated from the public funds of the county where the respondent resides.~~ The county of residence shall also pay all precommitment expenses including transportation to a mental health facility incurred in connection with the detention, examination, and precommitment custody of the respondent. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this chapter does not relieve a third

party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(2) The respondent or the responsible person appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent. The respondent, his attorney, or the responsible person appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(3) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, and if the respondent joins in the request for ~~such~~ the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

(4) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his right to appeal ~~such~~ the order by the court at the conclusion of any hearing ~~as a~~ the result of which such an order may be entered.

(5) Records and papers in proceedings under this ~~act~~

chapter shall be maintained separately by the clerks of the several courts. ~~Upon the release of any respondent or patient~~ Five days prior to the release of a respondent or patient, the facility shall notify the clerk of the court ~~within five (5) days of the release,~~ and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indices of cases in ~~such~~ the court unless the court orders the record opened for good cause shown."

Section 10. Section 38-1310, R.C.M. 1947, is amended to read as follows:

"38-1310. Transfer or commitment to facility -- procedure. No person who is in the custody of the department of institutions for any purpose other than treatment of severe mental illness ~~shall~~ may be transferred or committed to a mental health facility for more than 10 days unless ~~such~~ the transfer or commitment is effected according to the procedures set out in this ~~act~~ chapter. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer shall be given immediately to any assigned counsel at the mental health facility and to the parents of minors, guardians,

responsible persons, or conservators, as the case may be."

Section 11. Section 38-1313, R.C.M. 1947, is amended to read as follows:

"38-1313. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment ~~shall~~ does not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for treatment, evaluation, or care.

(2) Whenever ~~any~~ a person is committed to a mental health facility for a period of ~~three (3)~~ months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section ~~shall terminate~~ terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) ~~Any~~ A person who has been committed to a mental

health facility pursuant to this ~~act shall be~~ chapter is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection ~~shall~~ does not affect, however, ~~any~~ a guardianship or conservatorship created independently of the commitment proceedings~~,~~ according to the provisions of Montana law relating to the appointment of conservators and guardians generally. ~~Any~~ A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) ~~Any~~ A person committed to a mental health facility prior to ~~the effective date of this act shall enjoy~~ July 1, 1975, enjoys all the rights and privileges of a person committed after ~~the effective~~ that date ~~of this act~~.

(5) No person who has received evaluation or treatment under any of the provisions of this ~~act shall~~ chapter may be discriminated against because of ~~such~~ that status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at ~~any~~ a

mental health facility ~~shall~~ may not be admitted into evidence in ~~any~~ a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless it has probative value in the formulation of an opinion by a professional person as to the determination of serious mental illness or a prescribed course of treatment and the court determines that the probative value outweighs the prejudice."

Section 12. Section 38-1322, R.C.M. 1947, is amended to read as follows:

"38-1322. Treatment procedures -- restrictions. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the responsible person appointed by the court, and any other interested party of the patient's choice. At least one ~~(1)~~ of those consulted must consent to the treatment along with the patient's counsel. If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility or with the department of institutions shall be appointed before any such treatment procedure can be employed. The facility shall send notice

of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the responsible person appointed by the court at least ~~ten (10)~~ days prior to the commencement of ~~such~~ the extraordinary treatment program."

Section 13. Section 38-1324, R.C.M. 1947, is amended to read as follows:

"38-1324. Treatment plan for patient established. (1) Each patient admitted as an inpatient to a mental health facility for a period of more than ~~seventy-two (72)~~ hours shall have a comprehensive physical and mental examination and review of behavioral status within ~~forty-eight (48)~~ hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons including a psychiatrist~~, if reasonably available~~ and shall be implemented ~~as soon as possible, in any event,~~ no later than ~~five (5)~~ 10 days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions, and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible, one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate,

into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every ~~ninety (90)~~ days, each patient shall receive a mental examination from, and his treatment plan shall be reviewed by, a professional person other than the professional person responsible for supervising the implementation of the plan."

Section 14. Section 38-1325, R.C.M. 1947, is amended to read as follows:

"38-1325. Examination following commitment. No later than ~~fifteen (15)~~ 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility, or his appointed, professionally qualified agent, shall ~~examine~~ reexamine the committed patient and shall determine whether ~~the patient~~ he continues to require commitment to the facility and whether a treatment plan complying with this ~~act~~ chapter has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, ~~or if a treatment plan has not been implemented,~~ he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be

reported immediately to the professional person in charge of the facility, the director of the department of institutions, the mental disabilities board of visitors, and the patient's counsel."

Section 15. Section 38-1328, R.C.M. 1947, is amended to read as follows:

"38-1328. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any ~~professional~~ person ~~or attorney~~ authorized in writing by the patient and the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including, but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior,

estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive~~, not~~ rather than interpretative~~,~~ fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each pericdic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after care plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status, which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out~~;~~.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary on at least a weekly basis by a professional person involved in the patient's treatment of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the

patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information~~,~~ and initialed within ~~twenty-four (24)~~ hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the ~~fifteen (15) day~~ 30-day review provided for in ~~section~~ 38-1325."

Section 16. Section 38-1330, R.C.M. 1947, is amended to read as follows:

"38-1330. Mental disabilities board of visitors -- creation and responsibilities. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five ~~(5)~~ persons representing but not limited to consumers, the medical sciences, and the behavioral sciences, at least three ~~(3)~~ of whom ~~shall~~ may not be professional persons and at least one ~~(1)~~ of whom

shall be a representative of an organizatica concerned with the care and welfare of the mentally ill. No one may be a member of the board who is an agent or employee of the department of institutions or ~~of any~~ a mental health facility affected by this ~~act~~ chapter. If a board of similar title and structure is created in any act concerning the treatment of the mentally retarded or developmentally disabled, then only one board shall be created to perform the functions ~~set out in~~ of both ~~acts~~ and the board so created shall include at least one ~~(1)~~ representative of an organization concerned with the care and welfare of the mentally ill and one ~~(1)~~ representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this ~~act~~ chapter.

(3) The board shall review all plans for experimental research involving persons admitted to ~~any~~ a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for

research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to ~~any~~ a mental health facility affected by this ~~act shall~~ chapter may be commenced unless it is approved by the mental disabilities board of visitors.

(4) The board shall, at least annually, inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this ~~act~~ chapter. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(5) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this ~~act~~ chapter. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(7) The board shall employ and be responsible for

full-time legal counsel at the Warm Springs state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability. The expense of the legal counsel employed by the board shall be paid by the department of institutions at a rate commensurate with the compensation paid to the legal counsel employed by other state agencies.

~~(7)~~ (8) If the board believes that any facility is failing to comply with the provisions of this ~~act~~ chapter in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the next of kin or guardian of any patient involved, the responsible person appointed by the court for any patient involved, the professional person in charge of the facility, the director of the department of institutions, and the district court which has jurisdiction over the facility.

~~(8)~~ (9) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the ~~Montana~~ legislature concerning the status of

the mental health facilities and treatment programs which it has inspected.

~~(9)~~ (10) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this ~~act~~ chapter."

Section 17. Section 38-1331, R.C.M. 1947, is amended to read as follows:

"38-1331. ~~Standards for treatment to be known.~~ Statement of rights to be furnished and posted. Each patient ~~and his next of kin, guardian, conservator, or the responsible person appointed by the court~~ shall promptly upon ~~the patient's~~ his admission receive, in language he understands, a written ~~notice,~~ statement ~~in language he understands, of all the above standards for adequate treatment~~ of all of his rights under this chapter, including the right to treatment, the right to the development of a treatment plan, and the right to and the availability of legal counsel, and the rules for patient labor. In addition a copy of ~~all the above standards~~ the foregoing statement shall be posted in each ward."

-End-

STATE OF MONTANA

REQUEST NO. 413–77

FISCAL NOTE

Form BD-15

mpliance with a written request received February 9, 19 77, there is hereby submitted a Fiscal Note Senate Bill 413 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

ackground information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise and clarify the laws relating to the commitment of mentally ill persons.

ASSUMPTIONS:

1. Amendments relating to the revision and clarification of the commitment laws can be accomplished without additional funds.
2. One Lawyer III would be employed by the Board of Visitors.
3. No additional legal counsel would be employed at the Regional Mental Health Centers. If this assumption is invalid, the costs would increase accordingly.

FISCAL IMPACT:

	FY 78	FY 79
Personal services	$21,571	$21,944
Operating expenses	2,200	2,200
Additional cost of proposed legislation	$23,771	$24,144

These are figures for the cost of one Lawyer.

Richard L. Drew for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-77

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
S.B. 396	2-4-77	2-12-77	2-12-77			2-12-77			
S.B. 397	2-4-77	2-12-77	2-12-77	2-12-77					
S.B. 398	2-4-77	2-12-77	2-12-77			2-12-77			
S.B. 402	2-5-77	2/17, 2/22 & 2-23-77	2-23-77			2-23-77			
S.B. 405	2-5-77	2-16-77	2-16-77	2-16-77					
S.B. 406	2-5-77	2-16-77	2-16-77		2-16-77				
S.B. 413	2-8-77	2/14 & 2-16-77	2-16-77			2-16-77			
S.B. 414	2-8-77	2-17-77	2-17-77	2-17-77					
S.B. 415	2-8-77	2-17-77	2-17-77	2-17-77					
S.B. 417	2-8-77	2-14-77	2-16-77		2-16-77				
S.B. 418	2-9-77	2/15 & 2-18-77	2-18-77		2-18-77				
S.B. 419	2-9-77	2-14-77	2-16-77	2-16-77					
S.B. 439	2-16-77	2-18-77	2-18-77		2-18-77				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

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MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 14, 1977

The meeting of this committee was called to order by the Chairman, Senator Turnage, at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Bob Keller - Kalispell
Joan Uda - Office of Budget & Program Planning
Jim Larson - Montana Hospital Assn.
Tom Boland - Board of Visitors
Donald L. Harr - Billings and Great Falls Deaconess Hospital, Dept. of Psychiatry
Duncan D. Burford - M.D., President of Montana Psychiatric Assn., Billings
Jerry T. Loendorf - Montana Medical Assn.
Chad Smith - Montana Hospital Assn.
William Leary - Montana Hospital Assn.
Nick Rotering - attorney, Dept. of Institutions

CONSIDERATION OF SENATE BILL 413:

Senator Towe, sponsor of S.B. 413, explained the bill corrects some things which were omitted last session. He then went over these items for the committee. After doing this, he introduced Mr. Bob Keller of Kalispell as his first proponent of S.B. 413. Mr. Keller suggested amendments to page 20, line 17, and to page 25, line 17. Mr. Keller told the committee that it was wrong to have to wait until people get seriously mentally ill before they can be helped.

The next proponent to testify was Nick Rotering of the Department of Institutions. He said that he was concerned about lines 3 and 5 on page 35 and about section 16 on page 44 which concerns the makeup of the Board of Visitors. He was also concerned about the payment of legal counsel used by the Board of Visitors which is on page 47.

Joan Uda, attorney for the office of Budget and Program Planning, appeared in support of S.B. 413, however, she said that they question the time on the voluntary admissions and suggested that perhaps there should be a valuation period of ten days.

The next proponent was Tom Boland of the Board of Visitors who testified for himself and not the board, saying that he felt that S.B. 413 is a compromise bill and not left wing legislation as has been rumored, and that he is afraid the opponents will try to convince the committee of this.

Jim Larson, Veterans Admin., also appeared in support of S.B. 413. He was present on behalf of the Montana Hospital Association.

Dr. Harr, from Billings, representing the Billings and Great Falls Deaconess Hospitals, was the next proponent of S.B. 413. He said that they are very much in concurrence with the bill's changes to the law. He suggested that page 44, line 23, be amended by putting in physicians or medical profession rather than medical sciences. He also said he believed that page 47, line 17, should be changed so that there would be something to determine if there was an irregularity. He then complimented Senator Towe and others who worked on S.B. 413 on the remarkable job they had done. At this time Dr. Harr was allowed to speak on S.B. 417 as he had to leave early. He said that he felt that this bill is quite unnecessary if S.B. 413 is passed because the subject is well covered in S.B. 413. Therefore, he opposed S.B. 417.

Dr. Duncan D. Burford, of Billings, president of the Montana Psychiatric Assn. was the next proponent of S.B. 413 to testify. He said that he appreciated the work that had been done on S.B. 413. Dr. Burford said that mentally ill is a very restrictive definition and called for a better definition of seriously mentally ill. He told the committee that they now can offer effective and quick treatment for serious mental disorders and that the law should not stand in the way of a person getting the treatment he is in need of.

The next proponent was Tom Honzel, representing the County Attorney Assn. who said that they generally support S.B. 413, however, they are concerned in the smaller counties about the provisions for the immediate appointment of counsel and the five day period.

Jerry Loendorf, representing the Montana Medical Assn., told the committee that they supported S.B. 413 if it is true that attorneys can work with it.

Nancy Lien of the Mental Health Advisory Council then appeared as a proponent of S.B. 413 and simply said that they supported it.

Chad Smith, representing the Montana Hospital Assn., was the next proponent to testify and he offered some amendments to the bill. (See Exhibit 1) He explained that one was that the patient should not be heavily sedated and that the other two amendments would allow the hospital facility to determine if they will take a patient or not. He further explained the amendments they proposed to the committee and presented amendments for S.B. 417. (Ex. 2)

CONSIDERATION OF SENATE BILL 419:

Senator Towe explained this bill to the committee and said that, in some ways, this is worse than commitment.

Dr. Burford of Billings, pschiatrist, said they favored this bill if it is workable.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2-14-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

(EC Com.)

SENATE BILL NO. 413

Amend Senate Bill No. 413 as follows:

On page 2 in line 25, after the word "hospital", the second time, add "which is equipped and staffed to provide treatment for mentally ill persons".

On page 11 in line 2, after the period following the word "public", add the following: "No person shall be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit such person".

On page 17 in line 21, after the period following the word "others", add the following: "The respondent shall not be detained in any hospital or other mental facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the respondent".

On page 25 in line 21, after the word "patient", insert the words "at the place of detention".

Chad Smith
MT Hosp. Assn.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 16, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman at 8:10 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senator Regan who was excused until 9:30 a.m. this date.

The first order of business was the voting on bills in Executive Session.

EXECUTIVE SESSION

The following Senate bills were acted on as follows:

413 - Senator Towe moved each of the attached amendments, all of which carried unanimously. (See attachment #1). Senator Towe then moved that S.B. 413 as amended DO PASS. The motion carried unanimously.

419 - Senator Towe moved that S.B. 419 DO PASS. The motion carried unanimously.

417 - Senator Towe moved that S.B. 419 DO NOT PASS. The motion carried unanimously.

There being no further time for executive action, the committee met at this time, 9:30 a.m., to hear the bills scheduled for this date. At this time, Senator Regan joined the committee.

CONSIDERATION OF SENATE BILL 405:

Senator "Sandy" Mehrens of District 45, Anaconda, explained the object of this bill and said that he had introduced it at the request of the Fire Marshall.

DISPOSITION OF SENATE BILL 405:

Senator Warden moved that S.B. 405 DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 406:

Senator Jergenson, District 3, Chinook, sponsor of this bill, was present and explained the bill to the committee. He said that he had introduced it at the request of the Public Service Commission. He then called upon former senator, Gordon Bollinger, Chairman of the Public Service Commission, who in turn called upon the Commission's attorney, Ron Smith, to explain the bill in detail. He told the

(Attach #1)

Respectfully report as follows: That SENATE Bill No. 413,

the introduced bill, be amended as follows:

1. Amend title, line 8.
Following: "1947"
Insert: "; REPEALING SECTION 80-1908, R.C.M. 1947"

2. Amend page 2, section 2, subsection (6), line 25.
Following: "private hospital"
Insert: "which is equipped and staffed to provide treatment for persons with mental disorders"

3. Amend page 4, section 2, subsection (14), line 20.
Following: "facility"
Strike: "nor"
Insert: "or"

4. Amend page 11, section 4, subsection (5), line 4.
Following: "."
Insert: "No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person."

5. Amend page 14, section 5, subsection (3)(c), line 22.
Following: "counsel"

Helena, Mont.

Strike: ","
Insert: "and"
Following: "person"
Strike: ","

6. Amend page 16, section 5, subsection (4), line 6.
Following: "the"
Strike: "court"
Insert: "county attorney"

7. Amend page 16, section 5, subsection (4), line 15.
Following: "."
Insert: "If the professional person finds that commitment proceedings should continue, the court may order further evaluation prior to the hearing but the respondent may not be detained except as provided in this section."

8. Amend page 17, section 5, subsection (5), line 14.
Following: "can,"
Insert: "upon request of the county attorney and"

9. Amend page 17, section 5, subsection (5), line 21.
Following: "others"
Insert: "as provided in 38-1304(5)"

10. Amend page 20, section 5, subsection (7), line 18.
Following: "matters"
Strike: ". Mental disorder"
Insert: ", except that mental disorders"

11. Amend page 25, section 6, subsection (2), line 17.
Following: "court"
Insert: "and the county attorney at least"
Strike: "within"
Following: "days"
Strike: "of"
Insert: "prior to"

12. Amend page 25, section 6, subsection (3), line 21.
Following: "patient"
Insert: "at the place of detention"

13. Amend page 28, section 7, subsection (2), line 17.
Following: "detained"
Insert: "and treated"

14. Amend page 33, section 8, subsection (5), line 3.
Following: "treatment"
Insert: "and the county attorney who initiated the action"

15. Amend page 38, section 11, subsection (5), lines 4 through 8.
Following: "unless"
Strike: lines 4 through 8 in their entirety
Insert: "it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case

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and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.'"

16. Amend page 39, section 13, subsection (1), line 11.
Following: "facility"
Strike: "for a period of more than 72 hours"

17. Amend page 44, section 16, subsection (1), line 23.
Following: "consumers,"
Strike: "the medical sciences"
Insert: "doctors of medicine"

18. Amend page 45, section 16, subsection (1), line 3.
Following: "is"
Strike: "an"
Insert: "a full-time"
Following: "employee of"
Strike: "the"
Insert: "any"

19. Amend page 45, section 16, subsection (1), line 4.
Following: "department"
Strike: "of institutions"
Insert: "or agency of the state"

20. Amend page 47, section 16, subsection (7), lines 10 through 13.
Following: "capability."
Strike: lines 10 through 13 in their entirety

21. Amend page 47, section 16, subsection (8), line 17.
Following: "to"
Insert: "the professional person in charge of the facility and, if appropriate after waiting a reasonable time for a response from such professional person, the board may notify"

22. Amend page 47, section 16, subsection (8), lines 19 and 20.
Following: "involved,"
Strike: "the professional person in charge of the facility,"

23. Amend page 48, section 17, line 21.
Following: line 21
Insert: "Section 18. Repealer. Section 80-1908, R.C.M. 1947, is repealed."

Judiciary COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 311	clarify procedures for termination of parental rights of children to be released for adoption, etc.	3-2	Turnage	March 14 Monday	concurred in	3/25
SB 359	provide that water rights & certain preferred uses in excess of 20 cubic ft etc.	3-2	Lowe	March 2 Tues.	water concurred in amended	3/25
SB 393	provide for enforcement of air & water pollution laws by the dept of health & Env sciences etc.	3-2	Brown	March 14 Monday	concurred in	3-16
SB 402	establish a mandatory pretrial review panel for medical malpractice.	3-2	Murray	March 14 Monday	table	3-17
SB 413	revise & clarify laws relating to commitment of mentally ill persons.	3-2	Towe	March 15 Tues	concurred in amended	2/25
SB 9	for the revision of laws relating to gambling	3-8	Graham	no hearing	concurred in amended	3/22

JUDICIARY COMMITTEE

March 15, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Tuesday, March 15. All members were present except Representatives Colburn, Conroy and Roth.

Scheduled for hearing were Senate Bills 413 and 419.

SENATE BILL #413:
SENATOR TOWE, DISTRICT #34:
This bill is a clean-up bill. It is to revise and clarify the laws relating to the commitment of mentally ill persons and to amend those sections dealing with this area. We do have the support of all of the groups working with this problem and have been working with them. The county attorneys association is in support, also. There is pretty much general agreement. He went on to discuss section 3, subsection (2) on page 5 and the top of page 6. One of the requests that we received was that we should not limit voluntary admission. At this point any qualified person can make the certification He discussed the system of transporting and the cost of this. He also mentioned that they were changing the procedure concerning minors. We are saying that a minor can be committed for up to one year. He can take advantage of the measure that says he can be released within 5 days.

The Senator presented a copy of the proposed amendment, on page 7, line 20, and page 8, line 10, concerning the waiver of rights. We changed that, the waiver may be made by counsel or the responsible person acting together. The right to counsel may not be waived and the right to treatment can not be waived. There are also some changes on page 9, regarding the minor. We are taking away the complicated procedure for consent. The court shall appoint a guardian, if it is necessary to look out for the minors interests.

On page 11, concerning the procedure, in some cases it might be hard to make this work. First of all, someone must complain to the county attorney. The county attorney draws up the papers and files with the clerk of court. If there is a judge, then it goes on from there. If there is no judge, the clerk of court calls in to the nearest judge and then the judge is read the petition on the phone. Counsel is then appointed. The person is advised of his rights and then the 4 hour examination is conducted. From that point on other hearings can be waived. He presented proposed amendments to the committee.

On page 16, line 22, page 17, lines 23, 24 & 25, and on page 18. As he went through the amendments he explained each of them in detail.

He then went on to continue with the indoctrination, at that point if detention is ordered there is an immediate right to a detention hearing. This hearing has to be within 5 days of the original hearing. This will take the place of the old 72 hour treatment. On page 20,

the standard of proof, there are some changes. He discussed the imminent threat of self-inflicted injury. On page 24, he discussed the post-trial disposition hearing. He commented that on page 28, the emergency situation was pretty much unchanged.

He went on to explain the authorization to transport a patient, on page 31. On page 40, the amount of time would be changed from 5 days to 10 days, and there is now required a 2nd examination within 30 days. On page 45, section 16, there are some changes in the board. We want to add language, as to who may be a member. We ought to change that to exclude universities. The name should be the board of visitors, instead of the board of institutions. He also said, there would be one full-time legal counsel at Warm Springs.

ROBERT KELLER, ATTORNEY AND FORMER DISTRICT JUDGE:
While I was on the bench I was very concerned with this, 377. I was charged with making this bill function. We met for over 8 hours and hashed over the bill, the possibilities and what could be done. We came up with these amendments. You have an initial appearance and a hearing within 5 days. He went on to talk about the facilities. He suggested two amendments, which follow: On page 45, line 23, following "state", insert wording excluding state colleges or universities. Also, another amendment, page 48, section 8, line 12, following: "and" insert "the director of the department of institutions". This is a transitional thing so that we can utilize what we do have.

DR. BLOUKE, DEPARTMENT OF INSTITUTIONS:
We have had an opportunity to review the bill and are in favor of it.

JOAN UDA, BUDGET AND PROGRAM PLANNING:
Working for the governors office I have reviewed the bill and have been involved in the process. It does represent a compromise. It is a bill we can live with and for that reason we do support it. I do have some reservations about the definition on page 2. It redefines the mental health facility. I register some concern about this. That does limit what a mental health facility can be. It has no legal effect, but it possibly will have some practical effect. On page 6, line 2 through 5, concerning voluntary admission, a voluntary commitment, ought to be a voluntary commitment. I am not convinced there is a real need for the 10 days. She went on to talk about the language might not be clear. I do think it might improve the workability, however

CHAD SMITH, MONTANA HOSPITAL ASSOCIATION:
We are satisfied, that as written, we can live with it. I do want to emphasize the need for the amendments, on page 3 and page 11, line 7, the definition of the mental health facility. These are two very important amendments to this bill and it will make this bill workable. He went on to talk about how to control a person if the need arises.

JAMES JOHNSON, MONTANA LEGAL SERVICES:
I represent many of the patients at Warm Springs State Hospital. He discussed various mental disorders. I would suggest that on line 19, page 4, you add some words, and on page 26 and 27 you insert the language that was lost. You can't tell what is meant. He discussed what might happen to a patient. I have to oppose the hospital amendments. You are asking for more persons to be maimed in jail and for more suicides. He discussed the high rate of suicides among mental patients.

JAMES LARSON, MONTANA HOSPITAL ASSOCIATION:
I would like to address briefly the hospital amendments. The violent patients are the ones that cause the problems. They are usually put in a security room, they may be sedated and put in restraints. If we don't have these amendments the hospital might be subject to court action.

SUZANN WEILAND, COUNTY ATTORNEYS:
I attended the meeting that lasted forever. On behalf of the County Attorneys Association I would like to propose some amendments. She mentioned what has to be done right now if a person tries to commit suicide. There are counties where there are no district judges. This amendment would take care of it by it going before the Justice of the Peace. As this now reads it seems to me, we have to release the patient. I have a few other suggested amendments. She presented a copy to the committee (attached). She went on and enumerated the amendments and commented that 5 days should be changed to 8 days.

PAT BOEDECKER, LEWIS & CLARK MENTAL HEALTH ADVISORY BOARD:
I am speaking for the person who might become mentally ill in Montana. On page 3, section 3 and page 11, section 4 of the hospital amendments I want to discuss the effect of them. She went through the amendments and pointed out her objections. I trust the committee will study these amendments thoroughly. She presented a copy of her testimony to the committee. (attached).

JIM LARSON:
I oppose Senate Bill #419. He went on and talked of the court appointed guardian and that a person could be signed into Warm Springs on that authority. He felt the bill denied them their rights. It denies them equal protection under the commitment law. I vigorously oppose the addition of the county attorney as a person who might be able to sign a commitment petition.

CHAIRMAN SCULLY:
Are you reading the same bill I am. I don't see all of this in that bill.

The meeting had to be adjourned at 9:30 because of the crush of other committees, and would be continued the following morning at 8:00 a.m.

JUDICIARY COMMITTEE
March 16, 1977

The meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present except Representatives Colburn, Kennerly and Seifert.

The hearing continued on Senate Bills 413 and 419, because of the lack of time the day before.

SENATOR TOWE, DISTRICT #34:
Thank you Mr. Chairman, for letting us come back today to finish testimony on these bills. I appreciate it. I wish to go over the amendments presented yesterday by Sue Weiland. I am vigorously opposed to accepting them. He went through the amendments and stated his objections.

SENATE BILL #419:
SENATOR TOWE, DISTRICT #34:
This bill changes the definition of an incapacitated person in the Montana Uniform Probate Code. You cannot commit someone unless they are dangerous. I didn't want to fiddle with the definition of "seriously mentally ill". This bill goes into the guardianship statute as it now exists. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use od drugs, chronic intoxication, or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself. Or, if the person's judgment is so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

I have an amendment I wish to present to you, amend the title, line 6, following "code" insert, "and authorizing court ordered treatment of such persons"

BOB KELLER:
We have to do something with the people who are mentally ill but are not seriously mentally ill. This is an effort to polish the guardianship act.

JOAN BUDA, GOVERNOR"S OFFICE:
With the amendments, I am satisfied that this bill will give us a mechanism to solve the problem.

Discussion followed about what constitutes dangerous, mentally ill, or dangerously mentally ill.

SENATOR TOWE:
Seriously mentally ill means suffering from a mental disorder which has resultedin self-inflicted injury or injury to others, or the imminent threat thereof, or which has deprived the person afflicted of the

ability to protect his life or health. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senite, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill iwhtin the meaning of this chapter.

The real problem is the people being released without the proper care.

There was no further discussion and no further questions, no other proponents or opponents, the hearing closed on SB 419.

The committee adjourned at 9:10 and went into executive session.

John P. Scully, Chairman

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 17, 1977

The House Judiciary Committee held an executive session in room 436 of the Capitol Building, Helena, Montana, on Thursday, March 17, 1977 at 8:30 a.m. Chairman Scully presided. All members were present except Representatives Colburn and Seifert.

SENATE BILL #402:
REPRESENTATIVE HAND moved to table. The motion carried with the vote unanimous.

CHAIRMAN SCULLY appointed the following representatives to a sub-committee to study Senate Bills 413 and 419.

Representative Kennerly
Representative Dussault
Representative Baeth
Representative Courtney
Representative Ramirez

The sub-committee will report on Tuesday the 22nd.

CHAIRMAN SCULLY appointed the following representatives to a sub-committee to study Senate Bills 33, 34 and 37.

Representative Lory
Representative Eudaily

CHAIRMAN SCULLY appointed Representative Lory to carry Senate Bill 53 when it goes to the floor. He also appointed Representative Keyser to meet with staff attorney Diana Dowling and prepare amendments for the bill.

SENATE JOINT RESOLUTION #16:
REPRESENTATIVE LORY moved to be "not concurred in". With the vote a tie the bill will go to the floor with no committee recommendation.

SENATE BILL #149:
REPRESENTATIVE KEYSER moved "be concurred in". The motion carried with Representative Lory and Dussault voting "no".

SENATE BILL #101:
This bill was back for committee action after having been voted for reconsideration. REPRESENTATIVE DUSSAULT moved the amendments. The motion carried with the vote unanimous. REPRESENTATIVE LORY moved "not concurred in as amended". REPRESENTATIVE DUSSAULT moved a sub-stitute motion "be concurred in as amended". The vote was called by roll call and carried 7 to 8, with 3 absent.

Yes		No	
Baeth	McLane	Conroy	Roth
Courtney	Teague	Hand	
Day		Kennerly	
Dussault		Eudaily	
Holmes		Lory	
Keyser		Scully	

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 25, 1977

The House Judiciary Committee met for executive session at 9:00 a.m. Friday in room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided. All members were present except Representatives Colburn and Kennerly.

SENATE BILL #333:
Representative Day reported from the water sub-committee. The bill was amended and as amended concurred in. The committee voted to accept the sub-committee report, with the vote unanimous.

SENATE BILL #359:
Representative Day reported from the water sub-committee this bill be amended and as amended concurred in. The committee voted to accept the sub-committee recommendation with the vote unanimous. (attached)

SENATE BILL #376:
Representative Day reported from the water sub-committee that this bill was tabled. The committee voted to accept the sub-committee report with the vote unanimous.

SENATE BILL #216:
Representative Day reported from the water sub-committee that the committee had reconsidered their action on this bill, which had been tabled and the resulting vote was "not concurred in". The Judiciary Committee voted to accept the sub-committee action and the vote was unanimous.

SENATE BILL #419:
Representative Courtney reported from the Judiciary sub-committee. He moved the sub-committee report "not concurred in". The motion carried with Representative Teague voting "no".

SENATE BILL #37:
Representative Ramirez moved the proposed amendments be adopted. The motion carried. He then moved "be concurred in as amended". The motion carried with the vote unanimous.

SENATE BILL #413:
Representative Dussault reported from the sub-committee the proposed amendments. Representative Teague moved the committee adopt the proposed amendments except #1 and #11. Representative Dussault explained the amendments and what they would do. Representative Ramirez stated his objections to the two amendments. The motion to accept all except the two amendments carried with the vote unanimous.

Representative Hand moved the rejection of the two amendments after listening to the discussion. Representative Dussault stated that

the committee should consider leaving in amendment #1 and rejecting amendment #11. After a lengthy discussion the question was called and the motion carried with Representatives Dussault, Baeth, Holmes, and Courtney voting "no".

Representative Holmes moved to amend page 3, line 7. After some discussion the question was called and the motion failed with only Representative Holmes voting "yes".

Representative Hand moved Senate Bill #413 "be concurred in as amended". The motion carried with the vote unanimous.

SENATE BILL #311:
Representative Ramirez moved "be concurred in". He discussed his feelings concerning page 13, line 4, the rights of the father. He said that after giving it a lot of thought he would not offer any amendments. The motion carried with the vote unanimous.

CHAIRMAN SCULLY appointed the following representatives to carry the various senate bills that had been acted upon.

Senate Bill 311	Ramirez
Senate Bill 413	Courtney
Senate Bill 37	Lory

REPRESENTATIVE DAY will appoint the people to carry the water bills.

CHAIRMAN SCULLY reminded the members to give him their lists of priorities that would be offered for interim studies. They are to pick a 1st and 2nd priority and then in descending order to the bottom of the list which totals 7.

The meeting adjourned at 10:05 a.m.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

SENATE BILL NO. 413

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL PERSONS AND TO AMEND SECTIONS 38-1232, 38-1301 THROUGH 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, AND 38-1331, R.C.M. 1947; REPEALING SECTION 80-1908, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 38-1301, R.C.M. 1947, is amended to read as follows:

"38-1301. Purpose of ~~act~~ chapter. The purpose of this ~~act~~ chapter is:

(1) to secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person, and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

~~(2) to deprive a person of his liberty for purposes of treatment or care only when less restrictive alternatives are unavailable and only when his safety or the safety of others is endangered, and to provide for due process of law when this is done~~ to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this chapter."

Section 2. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"38-1302. Definitions. As used in this ~~act~~ chapter, the following definitions apply:

(1) "Board" means the mental disabilities board of visitors created by this ~~act~~ chapter.

(2) "Court" means ~~the~~ any district court of the state of Montana.

(3) "Department" means the department of institutions.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a

REFERENCE BILL

public hospital or a licensed private hospital ~~which~~ EQUIPPED AND STAFFED TO PROVIDE TREATMENT FOR PERSONS WITH MENTAL DISORDERS or, a community mental health center, or any mental health clinic or treatment center approved by the department. No correctional institution or facility, or jail, is a mental health facility within the meaning of this ~~act~~ chapter.

(7) "Next of kin" shall include, but need not be limited to, the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means ~~a person committed by the court to a seventy-two (72) hour evaluation or treatment or for a longer period~~ a person committed by the court for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman or other peace officer.

(10) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of mental health and certified by the department of institutions in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional

person.

~~(11)~~(12) "Respondent" means a person alleged in a petition filed pursuant to this ~~act~~ chapter to be seriously mentally ill.

~~(12)~~(13) "Responsible person" means any person willing and able to assume responsibility for a seriously mentally ill person, or person alleged to be seriously mentally ill, including next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a "responsible person" set out in this ~~act~~ chapter. Only one person ~~shall~~ may at any one time be the "responsible person" within the meaning of this ~~act~~ chapter. In appointing a responsible person, the court shall consider the preference of the respondent. The court may, at any time for good cause shown, change its designation of the "responsible person".

~~(13)~~(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof, or which has deprived the person afflicted of the ability to protect his life or health. No person may be involuntarily committed to a mental health facility nor OR detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering

from a mental disorder unless the condition causes ~~the~~ person him to be seriously mentally ill within the meaning of this ~~act~~ chapter."

Section 3. Section 38-1303, R.C.M. 1947, is amended to read as follows:

"38-1303. Voluntary admission -- cost of admission. (1) Nothing in this ~~act shall~~ chapter may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department ~~of institutions~~. It ~~shall~~ is not be valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. The form shall contain a statement of the rights of the person voluntarily applying for admission, as set out in this ~~act~~ chapter, including the right to release.

(2) Any applicant who wishes to voluntarily apply for admission to the Montana state hospital shall first obtain certification ~~from the regional mental health director of his mental health region or if not reasonably available~~ from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are

unable to provide adequate evaluation and treatment.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for ~~10 days after his initial admission and for~~ no more than ~~five (5)~~ days, EXCLUDING WEEKENDS AND HOLIDAYS, past his written request for release ~~thereafter~~.

(4) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(5) The costs of transportation to a mental health facility under this section shall be provided by ~~the patient, his parents, guardian, or~~ the welfare department of the county of the patient's residence. However, if protective proceedings under Title 91A, chapter 5, have been or are initiated with respect to the person, the welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

(6) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

(7) Notwithstanding any other provision of law, a minor who is ~~sixteen (16)~~ years of age or older may consent

to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(8) ~~Voluntary~~ Except as provided by this subsection, voluntary ~~commitment~~ ADMISSION of a minor to a mental health facility for an in-patient course of treatment shall be for ~~a period of no more than thirty (30) days~~ the same period of time as that for an adult. A MINOR VOLUNTARILY ADMITTED SHALL HAVE THE RIGHT TO BE RELEASED WITHIN 5 DAYS OF HIS REQUEST AS PROVIDED IN 38-1303(3). THE MINOR HIMSELF MAY MAKE SUCH REQUEST. Unless there has been a periodic review and a voluntary ~~recommitment~~ READMISSION consented to by the minor patient and his counsel, voluntary ~~commitment~~ ADMISSION terminates at the expiration of 1 year. ~~If the professional person in charge of a minor patient determines that the commitment should continue for a period of more than thirty (30) days, he shall commence involuntary commitment proceedings in accordance with this act.~~ Counsel shall be appointed for the minor.

(9) If, in any voluntary ~~commitment~~ ADMISSION for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary ~~commitment~~ ADMISSION, then the ~~commitment~~ ADMISSION shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right

to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary ~~commitment~~ ADMISSION of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application."

Section 4. Section 38-1304, R.C.M. 1947, is amended to read as follows:

"38-1304. Rights and waiver of rights. (1) Whenever a person is involuntarily detained, or is examined by ~~a professional person~~ pursuant to ~~section~~ 38-1305, ~~or is notified that he will be the subject of a hearing pursuant to section 38-1305 or 38-1306,~~ the person shall be informed of his constitutional rights and his rights under this ~~act~~ chapter. A person may waive his procedural rights, ~~provided that the waiver is knowingly and intentionally made~~ or his rights may be waived by his counsel and responsible person acting together if a record is made of the reasons for the waiver. The right to counsel ~~in a hearing held pursuant to section 38-1306~~ may not be waived. The right to treatment provided for in this ~~act~~ chapter may not be waived.

(2) ~~In the case of a person who has been detained for a seventy-two (72) hour inpatient evaluation and treatment or for a longer period of time, a waiver of rights can be knowingly and intentionally made only with the concurrence of the patient's attorney or of the responsible person~~

~~appointed--by--the--court.~~ The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse affects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, ~~of~~ his rights ~~can be knowingly and intentionally made:~~

~~(i) when the minor is under the age of twelve (12), by the parents of the minor;~~

~~(ii) when the minor is over the age of twelve (12), by the youth and his parents;~~

~~(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with advice of counsel~~ may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest

between a minor and his parents or guardian, the court may shall appoint a guardian ad litem for ~~the minor~~ him.

(4) In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state or by this ~~act~~ chapter, any person who is involuntarily detained or against whom a petition is filed pursuant to this ~~act~~ chapter has the following rights:

(a) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(b) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(c) the right in any hearing to cross-examine witnesses;

(d) the right to be represented by counsel;

(e) the right to remain silent;

(f) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(g) the right to view and copy all petitions on file with the court concerning him;

(h) the right to be examined by a professional person of his choice when such professional person is reasonably available;

(i) the right to be dressed in his own clothes at any hearing held pursuant to this ~~act~~ chapter; and

(j) the right to refuse any but lifesaving medication for up to ~~twenty-four~~ (24) hours prior to any hearing held pursuant to this ~~act~~ chapter.

(5) A person detained pursuant to this chapter shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public. Whenever possible, a person detained pursuant to this chapter shall be detained in a mental health facility and in the county of residence. NO PERSON MAY BE DETAINED IN ANY HOSPITAL OR OTHER MEDICAL FACILITY WHICH IS NOT A MENTAL HEALTH FACILITY UNLESS SUCH HOSPITAL OR FACILITY HAS AGREED IN WRITING TO ADMIT THE PERSON. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. A person detained prior to involuntary commitment may apply to the court for immediate

relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 5. Section 38-1305, R.C.M. 1947, is amended to read as follows:

"38-1305. Petition alleging person as seriously mentally ill -- contents and procedure. (1) A The county attorney, ~~on his own initiative or~~ upon the written request of any person, may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that ~~an evaluation of the person's condition be made~~ the person be committed to a mental health facility for a period of no more than 3 months.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent, and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin,

to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as responsible person;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the person requesting the petition, the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

~~(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is seriously mentally ill. If the court finds no such probable cause, the petition shall be discharged. If the court finds probable cause it shall submit the petition to a professional person for evaluation. If probable cause is found, the court may appoint a responsible person to protect the interests of the respondent. The responsible person shall be notified as~~

~~soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be hand delivered or mailed to the respondent and to the attorney, the person or persons legally responsible for care, support, and maintenance of the respondent, next of kin identified in the petition, and the person or persons identified by the county attorney as possible responsible persons.~~

(a) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(b) If a judge is available, he shall consider the petition and if he finds no probable cause it shall be dismissed. If the judge finds probable cause, counsel shall be immediately appointed for the respondent and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this chapter, and the substantive effect of the petition. THE RESPONDENT MAY, AT THIS APPEARANCE, OBJECT TO THE FINDING OF PROBABLE CAUSE FOR FILING THE PETITION. The judge shall appoint a professional person and a responsible person and set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent shall be taken into

consideration in the appointment of the responsible person and in the confirmation of the appointment of the attorney.

(c) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel, AND a professional person, and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this chapter, and the contents of the clerk's order as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a responsible person, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

(4) ~~(a) Upon receipt of the petition, the~~

~~professional person shall examine the respondent and make such inquiry as he or she may deem appropriate. If the respondent does not cooperate and if requested by the professional person, the court may order the respondent to submit to examination by a professional person at a time and place designated by the court. The examination so ordered shall not exceed a period of four (4) hours.~~

~~(b) When the professional person first contacts the respondent, before he begins any examination, he shall give a copy of the petition to the respondent and shall explain to the respondent the nature of the proceeding and his rights as set forth in the petition.~~ Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the ~~court~~ COUNTY ATTORNEY of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney. ~~If the professional person~~ AT THE FOLLOWING ACTION SHALL BE TAKEN BASED ON THE PROFESSIONAL PERSON'S FINDINGS:

(A) IF HE recommends dismissal, he shall additionally notify counsel and the respondent shall be released and the petition dismissed. However, the county attorney may, upon

good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours. ~~If the professional person [a] if the professional person~~

(b) IF HE FINDS THAT COMMITMENT PROCEEDINGS SHOULD CONTINUE, THE ~~COURT MAY ORDER FURTHER EVALUATION PRIOR TO THE HEARING BUT THE RESPONDENT MAY NOT BE DETAINED EXCEPT AS PROVIDED IN THIS SECTION.~~ HEARING SHALL BE HELD AS SCHEDULED. THE COURT MAY NOT ORDER FURTHER EVALUATION PENDING THE HEARING UNLESS SOUND MEDICAL REASONS REQUIRE ADDITIONAL TIME FOR A COMPLETE EVALUATION; SUCH REASONS SHALL BE SET FORTH IN THE ORDER ALONG WITH THE AMOUNT OF ADDITIONAL TIME NEEDED.

(5) ~~On the basis of his examination, the professional person shall recommend in writing either that the petition be dismissed or that a seventy-two (72) hour inpatient evaluation and treatment be ordered. If dismissal is recommended, the petition shall be summarily dismissed. The petition shall be dismissed if the respondent accepts voluntary treatment or admission to a mental health facility approved by the professional person conducting the examination. Whenever a professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, the recommendation shall be accompanied by a report explaining the reason for the recommendation and identifying~~

~~any tests or evaluation devices which the professional person employed in evaluating the respondent. If the professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, notice of this recommendation shall be mailed or delivered to the respondent, the next of kin, when known, any person responsible for the care, support, and maintenance of the respondent, any other person identified in the petition, and the responsible person, if any, appointed by the court. Notice shall include the date, time, and place of the respondent's next appearance before the court. The judge can, UPON REQUEST OF THE COUNTY ATTORNEY AND upon probable cause for detention, order detention of the respondent pending the hearing, in which case counsel~~ THE COURT MAY NOT ORDER DETENTION OF RESPONDENT PENDING THE HEARING UNLESS REQUESTED BY THE COUNTY ATTORNEY AND UPON THE EXISTENCE OF PROBABLE CAUSE FOR DETENTION. COUNSEL shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith. In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others AS PROVIDED IN 38-1304(5). He shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the

respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.

~~(6) In the event the examining professional person recommends a seventy-two (72) hour inpatient evaluation and treatment, the respondent shall be brought before the court by the county attorney without undue delay, advised of the recommendation, supplied with a copy of the petition and the recommendation and advised of his rights to a hearing and to counsel. If a responsible person has not yet been appointed, the court shall appoint a responsible person at this time. If the right to a hearing and to counsel are waived, the court shall direct that the respondent be detained at a mental health facility for evaluation and treatment not to exceed seventy-two (72) hours. If a hearing is requested by the respondent, his attorney, or the responsible person appointed by the court, a time and place shall be set for the hearing. The matter shall be given precedence over all other court matters. If the respondent is unwilling or unable to retain counsel, the court shall appoint counsel and be responsible for notification.~~ Notice of the petition shall be hand delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's

counsel, professional person, and responsible person shall be hand delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible responsible person other than the one named as the responsible person. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 93-1512 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

~~(7) The hearing shall be held before the court without a jury. The respondent may present such testimony and relevant documentary evidence as he or the responsible person or counsel desires. The county attorney shall represent the state. The professional person who made the recommendation shall be present in court and may be cross-examined concerning his recommendation and his report.~~

~~After full hearing the court shall determine whether the respondent is seriously mentally ill within the definition provided herein. If the court finds the respondent is not seriously mentally ill, he or she shall be discharged and the petition dismissed. If the court finds the respondent to be seriously mentally ill, it shall order the respondent detained at a mental health facility for examination and treatment not exceeding seventy-two (72) hours. However, the court may dismiss the petition if the respondent agrees to accept voluntary treatment or admission to a mental health facility.~~ The respondent shall be present unless his presence has been waived as provided in 38-1304(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this chapter. The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. ~~Mental disorder,~~ EXCEPT THAT MENTAL DISORDERS shall be evidenced to a reasonable medical certainty; imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition. The professional person appointed by the court

shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the patient is seriously mentally ill. The court may order the trial closed to the public for the protection of the respondent. If, upon trial, it is determined that the patient is not seriously mentally ill within the meaning of this chapter, he shall be discharged and the petition dismissed.

~~(8) Persons receiving evaluation and treatment pursuant to this section shall be given a reasonable choice of an available professional person qualified to provide such services.~~ The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 6. Section 38-1306, R.C.M. 1947, is amended to read as follows:

"38-1306. ~~Petition for commitment trial determination of court.~~ Posttrial disposition -- petition for extension. ~~(1) If in the opinion of the professional person in charge of the patient the person detained under the provisions of section 38-1305 does not require further evaluation or treatment he shall be released within seventy-two (72) hours. (2) In the opinion of the~~

professional person, the patient requires further evaluation or treatment, he shall advise the court accordingly not less than three (3) days from the date of detention and shall within the same time file a petition requesting that the patient be committed to a facility for a period not in excess of three (3) months. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall explain the reasons for the petition and shall identify any tests or evaluation devices which the professional person employed in evaluating the patient. The professional person may retain the patient in custody by court order pending a hearing on the petition only if detention is necessary to prevent injury to the patient or others.

(2) Upon receipt of a petition for commitment not to exceed three (3) months, the court shall immediately set the time and place for a hearing, which shall be held not more than three (3) days from the receipt of the petition. The court may extend the period to seven (7) days. The time for the hearing may be further extended at the request of counsel for the patient. The court shall give written notice to the professional person who requested the commitment, the patient, his counsel, his next of kin, when known, the responsible person appointed by the court, and the county attorney. At any time prior to the date set for

hearing, the patient, or his attorney, may request a jury trial, whereupon the time set for hearing will be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters on the jury calendar.

(3) At any time prior to trial on the petition before court or jury, the patient may waive trial and give written consent to commitment to a facility for a period not to exceed three (3) months. Such consent must be joined in writing by his attorney and by the responsible person appointed by the court.

(4) The patient shall be present and represented by counsel at all stages of the trial, and the sole question to be determined by the court or jury, as the case may be, shall be whether the patient is seriously mentally ill within the meaning set forth in this act. The professional person who filed the petition shall be present in court for the hearing and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except that, if tried by a jury, at least three-fourths (3/4) of the jurors must concur on a finding that the patient is seriously mentally ill. The finding may be appealed to the Montana supreme court in the same manner as other civil matters. The standard of proof in any hearing held pursuant to this section shall be proof beyond a

~~reasonable-doubt.--Any-court-may-order-a-hearing--closed--to the-public-for-the-protection-of-the-respondent.~~

~~(5)~~(1) (a) ~~If~~ upon hearing, it is determined ~~that-the patient--is-not-seriously-mentally-ill-within-the-meaning-of this-act,-he-shall-be-discharged-and--the--petition--of--the professional-person-dismissed.~~ If it is determined that the ~~patient~~ respondent is seriously mentally ill within the meaning of this ~~act~~ chapter the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

~~(a)~~(i) commit the ~~patient~~ respondent to a facility for a period of not more than ~~three-(3)~~ months;

~~(b)~~(ii) order the ~~patient~~ respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

~~(c)~~(iii) order outpatient therapy; or

~~(d)~~(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection ~~shall~~ may affect the ~~patient's~~ respondent's custody for a period of more than ~~three-(3)~~ months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the ~~patient~~ respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the ~~patient~~ respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(2) At any time within the ~~three--(3)--month~~ 3-month period the patient may be discharged on the written order of the professional person in charge of ~~the-patient~~ him. In the event the patient is not discharged within the ~~three-(3) month~~ 3-month period and if the term is not extended as provided herein, ~~the-patient~~ he shall be discharged by the facility at the end of ~~three--(3)~~ months without further order of the court. Notice of ~~such~~ the discharge ~~will~~ shall be filed with the court AND THE COUNTY ATTORNEY AT LEAST ~~within-five-(5)~~ days ~~of~~ PRIOR TO the discharge.

~~(6)~~(3) Not less than ~~two-(2)~~ calendar weeks prior to the end of the ~~three-(3)-month~~ 3-month period of detention, the professional person in charge of the patient AT THE PLACE OF DETENTION may petition the court for extension of

the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person. Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and to the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for ~~such~~ a hearing on a date not more than ~~ten (10)~~ days from the receipt of the request and notify the same people including the professional person in charge of the patient. ~~IF A HEARING IS NOT REQUESTED, THE COURT SHALL ENTER AN ORDER OF COMMITMENT FOR NOT TO EXCEED 6 MONTHS.~~ IF A HEARING IS NOT REQUESTED, THE COURT SHALL ENTER AN ORDER OF COMMITMENT FOR A PERIOD NOT TO EXCEED 6 MONTHS. Procedure on the petition for extension, when a hearing has been requested, shall be the same in all respects, as the procedure on the petition for the original ~~three (3) month~~ 3-month commitment except the patient ~~shall~~ is not be entitled to trial by jury. The

hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this ~~act~~ chapter, ~~the patient~~ he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in subsection ~~(5)~~(1) of this section except that no order ~~shall~~ may affect his custody for more than ~~six (6)~~ months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. ~~Any~~ A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

~~(7)~~(4) Further extensions may be obtained under the same procedure described in subsection ~~(6)~~(3) of this section except that the patient's custody ~~shall~~ may not be affected for more than ~~one (1)~~ year, without a renewal of

the commitment under the procedures set forth in subsection ~~(6)~~(3) of this section, including a statement of the findings required by subsection ~~(6)~~(3).

~~(8)~~(5) At any time during the patient's commitment the court may on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the responsible person appointed by the court, order the patient to be placed in the care and custody of relatives or guardians, or to be provided outpatient therapy or other appropriate placement or treatment."

Section 7. Section 38-1307, R.C.M. 1947, is amended to read as follows:

"38-1307. Emergency situation -- petition -- detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and, as a result of serious mental illness, to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation ~~genuinely~~ exists, then the person may be detained AND TREATED until the next regular business day.

At that time, the professional person shall ~~either cause the county attorney to file the petition provided for in section 38-1305 or shall~~ release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 38-1305 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

~~(3) When the petition is filed after an emergency detention, the court may order the respondent detained for the amount of time necessary for a professional person to conduct the examination and inquiry provided for in section 38-1305 and to report his findings and recommendations to the court. In no case shall such detention exceed twenty-four (24) hours from the time of the filing of the petition. Saturday, Sunday, and legal holidays shall not be included in computing the twenty-four (24) hour period. The court may also order the respondent detained during the seventy-two (72) hour evaluation and treatment period, if ordered, and through the period of the hearing on initial commitment, if held. No period of detention shall be ordered by the court pursuant to this section unless the court finds that such detention is required in the interest of public safety or the life or safety of the respondent. An order of detention shall include a statement of the~~

~~factual basis for the order.~~

~~(4) Any person detained pursuant to this section shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or of members of the public. Whenever possible, a person detained pursuant to this section shall be detained in a mental health facility. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and of the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. In no case shall a person be detained in a jail or other correctional facility pursuant to this section for a longer period of time than is required for the county attorney to file a petition and for a professional person to complete his initial examination and inquiry and report his findings to the court.~~

~~(5)~~(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any

county for the detention of persons held pursuant to this section."

Section 8. Section 38-1308, R.C.M. 1947, is amended to read as follows:

"38-1308. Outpatient care -- conditional release. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then ~~such~~ outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, ~~shall~~ may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when ~~such~~ the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care provided the transfer is in the best interest of the patient and the outpatient facility so

designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release, and because of that failure has become a substantial danger to himself or other persons, then, upon notification by the mental health facility designated to provide outpatient care, or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind ~~such~~ the order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, ~~and~~ his guardian or conservator, if any, his next of kin, if known, and the responsible person appointed by the court. The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in

charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person.

~~Upon expiration of the period of commitment or when the patient is released from outpatient care, notice in writing to the court which committed the patient for treatment shall be provided by the professional person in charge of the patient.~~

(5) Notice in writing to the court which committed the patient for treatment AND THE COUNTY ATTORNEY WHO INITIATED THE ACTION shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care."

Section 9. Section 38-1309, R.C.M. 1947, is amended to read as follows:

"38-1309. Right to counsel and appeal -- examination of respondent -- records. (1) The person alleged to be seriously mentally ill ~~shall have~~ has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint ~~an attorney~~ one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides. ~~If the court determines that the respondent is financially unable to employ an attorney, the~~

~~court shall appoint counsel who shall be compensated from the public funds of the county where the respondent resides.~~ The county of residence shall also pay all precommitment expenses including transportation to a mental health facility incurred in connection with the detention, examination, and precommitment custody of the respondent. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this chapter does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(2) The respondent or the responsible person appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent. The respondent, his attorney, or the responsible person appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(3) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, and if the respondent joins in the request for ~~such~~ the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of

an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

(4) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his right to appeal ~~such~~ the order by the court at the conclusion of any hearing ~~as a~~ the result of which such an order may be entered.

(5) Records and papers in proceedings under this ~~act~~ chapter shall be maintained separately by the clerks of the several courts. ~~Upon the release of any respondent or patient~~ Five days prior to the release of a respondent or patient, the facility shall notify the clerk of the court ~~within five (5) days of the release~~ and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indices of cases in ~~such~~ the court unless the court orders the record opened for good cause shown."

Section 10. Section 38-1310, R.C.M. 1947, is amended to read as follows:

"38-1310. Transfer or commitment to facility -- procedure. No person who is in the custody of the department of institutions for any purpose other than treatment of severe mental illness ~~shall~~ may be transferred or committed to a mental health facility for more than 10 days unless

such the transfer or commitment is effected according to the procedures set out in this ~~act~~ chapter. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer shall be given immediately to any assigned counsel at the mental health facility and to the parents of minors, guardians, responsible persons, or conservators, as the case may be."

Section 11. Section 38-1313, R.C.M. 1947, is amended to read as follows:

"38-1313. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment ~~shall~~ does not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for treatment, evaluation, or care.

(2) Whenever ~~any~~ a person is committed to a mental health facility for a period of ~~three (3)~~ months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person

to act as conservator of the respondent's property. Any conservatorship created pursuant to this section ~~shall terminate~~ terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) ~~Any~~ A person who has been committed to a mental health facility pursuant to this ~~act shall be~~ chapter is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection ~~shall~~ does not affect, however, ~~any~~ a guardianship or conservatorship created independently of the commitment proceedings, according to the provisions of Montana law relating to the appointment of conservators and guardians generally. ~~Any~~ A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) ~~Any~~ A person committed to a mental health facility prior to ~~the effective date of this act shall enjoy~~ July 1, 1975, enjoys all the rights and privileges of a person committed after ~~the effective~~ that date ~~of this act~~.

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(5) No person who has received evaluation or treatment under any ~~of the~~ provisions of this ~~act shall~~ chapter may be discriminated against because of ~~such~~ that status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at ~~any~~ a mental health facility ~~shall~~ may not be admitted into evidence in ~~any~~ a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless ~~it has probative value in the formulation of an opinion by a professional person as to the determination of serious mental illness or a prescribed course of treatment and the court determines that the probative value outweighs the prejudice.~~ IT IS NECESSARY TO A DETERMINATION OF THE PRESENT CONDITION OF THE RESPONDENT OR THE PROGNOSIS FOR TREATMENT IN THE PRESENT CASE AND THE JUDGE DETERMINES THAT THE NEED FOR THE EVIDENCE OUTWEIGHS THE PREJUDICIAL EFFECT OF ITS ADMISSION."

Section 12. Section 38-1322, R.C.M. 1947, is amended to read as follows:

"38-1322. Treatment procedures -- restrictions. Patients have a right not to be subjected to treatment

procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the responsible person appointed by the court, and any other interested party of the patient's choice. At least one ~~(1)~~ of those consulted must consent to the treatment along with the patient's counsel. If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility or with the department of institutions shall be appointed before any such treatment procedure can be employed. The facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the responsible person appointed by the court at least ~~ten (10)~~ days prior to the commencement of ~~such~~ the extraordinary treatment program."

Section 13. Section 38-1324, R.C.M. 1947, is amended to read as follows:

"38-1324. Treatment plan for patient established. (1) Each patient admitted as an inpatient to a mental health facility ~~for a period of more than seventy-two (72) hours~~ shall have a comprehensive physical and mental examination

and review of behavioral status within ~~forty-eight (48)~~ hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons including a psychiatrist~~, if reasonably available~~ and shall be implemented ~~as soon as possible, in any event,~~ no later than ~~five (5)~~ 10 days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions, and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to

be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible, one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every ~~ninety (90)~~ days, each patient shall receive a mental examination from, and his treatment plan shall be reviewed by, a professional person other than the professional person responsible for supervising the implementation of the plan."

Section 14. Section 38-1325, R.C.M. 1947, is amended to read as follows:

"38-1325. Examination following commitment. No later

than ~~fifteen-(15)~~ 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility, or his appointed, professionally qualified agent, shall ~~examine~~ reexamine the committed patient and shall determine whether ~~the patient~~ he continues to require commitment to the facility and whether a treatment plan complying with this ~~act~~ chapter has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, ~~or--if-a-treatment-plan-has-not-been-implemented,~~ he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department of institutions, the mental disabilities board of visitors, and the patient's counsel."

Section 15. Section 38-1328, R.C.M. 1947, is amended to read as follows:

"38-1328. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any ~~professional~~ person ~~or--attorney~~ authorized in writing by the patient and the board. The records shall also be made available to any attorney charged with representing the patient or any professional person

charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including, but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive~~y-not~~ rather than interpretative, fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after care plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status, which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out~~)~~.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary on at least a weekly basis by a professional person involved in the patient's treatment of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information, and initialed within ~~twenty-four--(24)~~ hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the ~~fifteen-(15)-day~~ 30-day review provided for in ~~section~~ 38-1325."

Section 16. Section 38-1330, R.C.M. 1947, is amended to read as follows:

"38-1330. Mental disabilities board of visitors -- creation and responsibilities. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five ~~(5)~~ persons representing but not limited to consumers, ~~the medical sciences~~ DOCTORS OF MEDICINE, and the behavioral sciences, at least three ~~(3)~~ of whom ~~shall~~ may not be professional persons and at least one ~~(1)~~ of whom shall be a representative of an organization concerned with the care and welfare of the mentally ill. No one may be a member of the board who is ~~an~~ A FULL-TIME agent or employee of ~~the~~ ~~ANY~~ THE department ~~of institutions OR AGENCY OF THE STATE~~ OF INSTITUTIONS or ~~of any~~ a mental health facility affected by this ~~act~~ chapter. EXCEPT THIS PROHIBITION DOES NOT AFFECT ANY EMPLOYEE OF A STATE COLLEGE OR UNIVERSITY. If a board of similar title and structure is created in any act concerning the treatment of the mentally retarded or developmentally disabled, then only one board shall be created to perform the functions ~~set out in~~ of both ~~acts~~ and the board so created shall include at least one ~~(1)~~

representative of an organization concerned with the care and welfare of the mentally ill and one ~~(1)~~ representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this ~~act~~ chapter.

(3) The board shall review all plans for experimental research involving persons admitted to ~~any~~ a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to ~~any~~ a mental health facility affected by this ~~act shall~~ chapter may be commenced unless it is approved by the mental disabilities board of visitors.

(4) The board shall, at least annually, inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this ~~act~~ chapter. The

board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(5) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this ~~act~~ chapter. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(7) The board shall employ and be responsible for full-time legal counsel at the Warm Springs state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability. ~~The expense of the legal counsel~~

~~employed by the board shall be paid by the department of institutions at a rate commensurate with the compensation paid to the legal counsel employed by other state agencies.~~

~~(7)~~(8) If the board believes that any facility is failing to comply with the provisions of this ~~act~~ chapter in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to THE PROFESSIONAL PERSON IN CHARGE OF THE FACILITY AND THE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS AND, IF APPROPRIATE AFTER WAITING A REASONABLE TIME FOR A RESPONSE FROM SUCH PROFESSIONAL PERSON, THE BOARD MAY NOTIFY the next of kin or guardian of any patient involved, the responsible person appointed by the court for any patient involved, ~~the professional person in charge of the facility, the director of the department of institutions,~~ and the district court which has jurisdiction over the facility.

~~(8)~~(9) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the ~~Montana~~ legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

~~(9)~~(10) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this ~~act~~ chapter."

Section 17. Section 38-1331, R.C.M. 1947, is amended to read as follows:

"38-1331. ~~Standards for treatment to be known.~~ Statement of rights to be furnished and posted. Each patient ~~and his next of kin, guardian, conservator, or the responsible person appointed by the court~~ shall promptly upon ~~the patient's~~ his admission receive, in language he understands, a written ~~notice,~~ statement ~~in language he understands, of all the above standards for adequate treatment~~ of all of his rights under this chapter, including the right to treatment, the right to the development of a treatment plan, and the right to and the availability of legal counsel, and the rules for patient labor. In addition a copy of ~~all the above standards~~ the foregoing statement shall be posted in each ward."

SECTION 18. SECTION 38-1232, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"38-1232. Mental disabilities board of visitors -- duties. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five ~~(5)~~ persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three ~~(3)~~ of whom ~~shall~~ may not be professional persons and at least one ~~(1)~~ of whom shall be a representative of an organization concerned with the care and welfare of the

developmentally disabled. No one may be a member of the board who is ~~an~~ a full-time agent or employee of ~~the~~ any department ~~of institutions~~ or agency of the state or ~~of any~~ residential facility affected by this act, except this prohibition does not affect any employee of a state college or university. If a board of similar title and structure is created in any act concerning the treatment of the mentally ill, then only one ~~(1)~~ board shall be created to perform the functions ~~set out in~~ of both ~~acts~~ and the board so created shall include at least one ~~(1)~~ representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association

on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act ~~shall~~ may be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of alleged mistreatment of a resident.

(3) The board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in

the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions. If appropriate after waiting a reasonable time for a response from such professional person, the board may notify the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient involved, ~~the professional person in charge of the facility, the director of the department of institutions~~ and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the Montana legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

(8) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act."

SECTION 19. REPEALER. SECTION 80-1908, R.C.M. 1947, IS REPEALED.

-End-